(5)

No. 85-693

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST),
Respondent.

On Writ of Certiorari to the Supreme Court of the State of California

BRIEF OF THE AMERICAN CHAMBER OF COMMERCE IN THE UNITED KINGDOM AND THE CONFEDERATION OF BRITISH INDUSTRY AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Did California violate the due process clause by seeking to exercise personal jurisdiction over a Japanese manufacturer merely because it sold components to a Taiwanese manufacturer with an awareness that some of its parts would find their way into the United States in the latter's final product?

2. Does California's exercise of personal jurisdiction over a dispute between the foreign parties become more unreasonable because California has already presumed that its substantive law should apply?

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INTEREST OF THE AMICI CURIAE

The amici submit this brief in support of Petitioner because the decision below threatens important and legitimate interests of their member enterprises and the in-

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* Petitioner and Respondent have both consented to the filing of this brief; the written consents are on file with the Clerk.

ternational business community generally. Amici believe that some of the international concerns expressed here have not been adequately addressed by the parties.

The American Chamber of Commerce in the United Kingdom ("Chamber") was founded in 1916 to promote and develop trade between the United States and Great Britain. Its primary aim continues to be to provide assistance to companies in the expansion of transatlantic trade. It is an independent, non-profit organization acting in the interests of its members to maintain a favorable climate in which this business can flourish. Its 2,200 corporate members represent, in almost equal proportions, American and British interests. The Chamber is affiliated with the Chamber of Commerce of the United States of America.

The Confederation of British Industry ("CBI") is a broad-based, non-profit organization whose membership includes 250,000 public and private companies in the United Kingdom. Half of its members are smaller firms with fewer than 200 employees. Its membership also includes most of Britain's nationalized industries and more than 200 trade associations, employer organizations and commercial associations. The CBI exists primarily to inform governments on the needs of British business.

These organizations and their members have four principal concerns about the potential adverse consequences of the decision below:

—First, a rule of U.S. law that a foreign component part manufacturer is subject to the personal jurisdiction of any U.S. court in the territory in which it may be aware its foreign customer's products might come to rest, would substantially increase the costs and uncertainties of international trade for British manufacturers.

—Second, many of the American members of the Chamber are concerned that such a U.S. rule would encourage other nations to exercise comparable

jurisdiction over American manufacturers who have no greater ties or relations with those foreign jurisdictions than Asahi has here with California.

—Third, the California Supreme Court presumed, without analysis, that California had the only substantial interest in applying its law once personal jurisdiction was found. It did not consider whether a Japanese or Taiwanese forum or law was more relevant to determining an apparent dispute about warranties and indemnification rights between two foreign companies.

—Fourth, an unqualified stream of commerce jurisdictional standard may well lead to conflicts between the governments and laws of the United Kingdom (and other countries) and the United States, to the detriment of trade between those nations.

STATEMENT

This is an indemnity dispute between two foreign manufacturers over their respective responsibilities for a motorcycle accident in California. The victim's family sued Cheng Shin, the Taiwanese tire manufacturer whose tire tubes were involved in the accident, on a tort theory. Two years later, Cheng Shin sought to implead Asahi, a Japanese tire valve manufacturer, as a third party defendant, because Asahi happened to have supplied the valves on the particular set of Cheng Shin's tire tubes involved in the accident. Cheng Shin has since settled with the California plaintiffs.

Cheng Shin sold tires throughout the world. In California, it sold tires through Cheng Shin Tire USA, Inc., a California corporation which is not a party. These sales allegedly accounted for about 20 percent of Cheng Shin's total U.S. sales. (App. to Pet. for Cert. ("App.") B-3, C-2).

Asahi was one of several valve suppliers to Cheng Shin, and apparently provided about 22 percent of the

valve stem assemblies used in Cheng Shin tubes in California. (App. B-3, C-2). In any event, Asahi's sales to Cheng Shin accounted for "a small part of [Asahi's] trade" (App. B-6)—namely less than 1.25 percent of its gross revenue in the relevant years. (App. B-2, C-2).

All of Asahi's sales to Cheng Shin occurred in Taiwan. Asahi has no presence in California, does not advertise or do business in California, and makes no sales into California. "Asahi did not design or control the system of distribution that carried its valve assemblies into California." (App. C-11). Asahi did not request Cheng Shin to market its components in California as an intermediary. It did not design, nor was it asked to design, any valve assemblies to comply with any specific California regulation or standard.

In sum, as the California Court of Appeals found, "Asahi had only such contact with California as is implicit in the fact that it sold components to another nonresident manufacturer which foreseeably would sell the finished product in California." (App. B-3). Based on this limited connection, the Court of Appeals rejected personal jurisdiction on the ground that "it would not be reasonable to require Asahi to respond to California solely on the basis of *ultimately realized foreseeability* that the product into which its component was embodied would be sold all over the world including California." (App. B-5-6) (emphasis added).

The California Supreme Court (per Bird, C.J.) reversed, because "California's interest in asserting jurisdiction over Asahi in this action is substantial." (App. C-16). The California Supreme Court also indicated that California substantive law would apply because of "California's interest in protecting its consumers, and the interests of California and Cheng Shin of avoiding inconsistent results and a multiplicity of litigation."

App. C-17). Justices Lucas and Mosk dissented. (C-19-21).

ARGUMENT

I. THE EXERCISE OF PERSONAL JURISDICTION BY THE CALIFORNIA SUPREME COURT OVER ASAHI VIOLATES THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION

A. Asahi did not Purposefully Avail Itself of the Privilege of Conducting Activities Within California

It has been clear since *Pennoyer v. Neff*, 95 U.S. 714 (1877), that the due process clause of the U.S. Constitution limits the exercise of personal jurisdiction by state courts over non-resident defendants. While the due process standard for personal jurisdiction purposes has changed over time—particularly in the forty years from *International Shoe v. Washington*, 326 U.S. 310 (1945), to *Burger King Corp. v. Rudzewicz*, —— U.S. ——, 105 S. Ct. 2174 (1985)—the jurisdictional claims in the present case go well beyond any that this Court has thus far upheld. The essence of the due process test is fairness and reasonableness. This constitutional standard should apply even more forcefully where a state within our federal system seeks to assert personal jurisdiction over a foreign corporation entirely resident abroad. As James Atwood and Kingman Brewster have observed:

> Since fairness is explicitly stated to be the nub of personal jurisdiction, it may be that more substantial activity within the United States should be required to bring a foreign national into an American court than to bring a citizen of one of the United States into the court of a sister state. . . . Surprise, inconvenience, and unfamiliarity (not to mention a clash of sovereignties) are not so likely when a corporation of one state is haled into the courts of another, as when a foreign national is brought before an American court.

1 J. Atwood & K. Brewster, *Antitrust and American Business Abroad* 113 (2d ed. 1981).

There is no evidence in the record that Asahi has any contacts with or purposefully availed itself of the benefits and protections of California law. The presence of Asahi's valves in California depended on decisions made solely by Cheng Shin. Cheng Shin unilaterally decided the timing, quantity and prices for its tire sales into California; when and in what quantities to use Asahi's valve components in these tires; and the timing, quantities and prices for any follow-up valve purchases from Asahi. The mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), *quoted in World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). This must be particularly true here, where Cheng Shin, the person seeking to assert a U.S. court's jurisdiction based on its own unilateral activity, is itself a nonresident.

Asahi admittedly received indirect commercial benefits from sales of Cheng Shin tires containing its valves in California. Such indirect commercial benefit, however, is not sufficient contact under *International Shoe*. To be subjected to the jurisdiction of a U.S. state court, a foreign person must enjoy "the benefits and protection of the laws of that state." *International Shoe*, 326 U.S. at 319. Indirect commercial benefit is not enough if it does not "stem from a constitutionally cognizable contact with that State." *World-Wide Volkswagen*, 444 U.S. at 299 (citing *Kulko v. California Superior Court*, 436 U.S. 84, 94-95 (1978))...Asahi receives no protection or benefit from California law, and seeks none. Therefore, it should not be subject to legal obligations in that state or be subject to the personal jurisdiction of a California court.

B. Mere Awareness that Component Parts Manufactured and Sold Abroad will be Incorporated into Finished Goods that Come to Rest in the United States is not Purposeful Activity Conferring Personal Jurisdiction Over the Foreign Manufacturer

This Court has cautioned that "the mere likelihood that a product will find its way into the forum State" is not sufficient to satisfy due process. *World-Wide Volkswagen*, 444 U.S. at 297. Otherwise, "a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, . . . [and] [e]very seller of chattels would in effect appoint the chattel his agent for service of process." *Id.* at 296 (citing *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F.2d 502, 507 (4th Cir. 1956)). Rather, the foreseeability required for due process analysis is that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297 (citations omitted).

In discussing this issue in *World-Wide Volkswagen* (444 U.S. at 298), this Court cited *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961), in a context arguably suggesting that a foreign person may be subjected to a forum's jurisdiction if it can reasonably expect its product to be purchased by consumers in the forum. In *Gray*, the Illinois Supreme Court held that an injured consumer could validly assert a claim in her home state against an Ohio manufacturer of a component safety valve contained in a water heater manufactured by a Pennsylvania corporation.

Gray, however, differs from this case. *Gray* involved persons within the United States operating within a few hundred miles of each other. As this Court recognized in *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-23 (1957), there has been an increasing nationalization of commerce within the United States.

> The economic interdependence of the States was foreseen and desired by the Framers [of the Constitution]. In the Commerce Clause, they provided that the nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities.

World-Wide Volkswagen, 444 U.S. at 293 (citing *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 538 (1949)).[1] Even if this "fundamental transformation in the American economy" (*World-wide Volkswagen*, 444 U.S. at 293) were to justify the exercise of personal jurisdiction in *Gray*, it does not justify jurisdiction over a Japanese valve maker that produces its product 5,000 miles from U.S. shores and sells it to a foreign tire maker for assembly 6,000 miles distant.

There may be a common market within the United States, but there is as yet no common market within the world community. To expect Japanese and other foreign manufacturers to assume responsibility for compliance with the law of every nation and national subdivision where the final products in which these components are integrated may be shipped by others beyond their control, is to impose burdens on the manufacturers and their economies which they have not assumed as "sister states . . . in the context of our federal system of government." *World-Wide Volkswagen*, 444 U.S. at 293-94.

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[1] However, this Court has also recognized certain jurisdictional limitations:

> But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the powers of the respective States.

Hanson v. Denckla, 357 U.S. at 250-51, *quoted in World-Wide Volkswagen*, 444 U.S. at 294. These restrictions upon the power of states are even more fundamental when the issue involves claims to authority extending beyond the borders of the United States itself.

A stone dropped in the Sea of Japan may create ripples that find their way to the beaches of California. But the mere fact that a faint, foreseeable reverberation may be traced to remote antecedents does not make it fair or just to hold remote persons legally responsible for it. As Judge Learned Hand observed in a leading antitrust case:

> There may be agreements made beyond our borders not intended to affect imports, which do affect them. . . . Almost any limitation of the supply of goods in Europe, for example, or in South America, may have repercussions in the United States if there is trade between the two. Yet when one considers the international complication likely to arise from an effort in this country to treat such agreements as unlawful, it is safe to assume that Congress did not intend the [Sherman] Act to cover them.[2]

This Court has stated that the Sherman Act represents Congress' exercise of "the full extent of its constitutional power." *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 398 (1978) (footnote omitted). If the Sherman Act is not to be construed as reaching conduct beyond our shores which has only an indirect effect within our markets in the stream of international commerce, the exercise of personal jurisdiction over persons beyond our shores whose off-shore activities have only indirect repercussions in the United States is equally unwarranted.

Asahi officials may know, or be able to learn, where Cheng Shin tires incorporating Asahi valves are shipped.

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[2] *United States v. Aluminum Co. of America ("Alcoa")*, 148 F.2d 416, 443 (2d Cir. 1945). *Alcoa*, which as modified by *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597 (9th Cir. 1976), and *Mannington Mills, Inc. v. Congoleum Corp.*, 595 F.2d 1287 (3d Cir. 1979), represents U.S. law, has been criticized in the United Kingdom for extending U.S. jurisdiction too far. *See, e.g.*, Amicus Curiae Brief for the British Government, *In re Uranium Antitrust Litigation*, 480 F. Supp. 1138 (N.D. Ill. 1979), *reprinted in* A.V. Lowe, *Extraterritorial Jurisdiction: An Annotated Collection of Legal Materials* 156 (1983). Such criticism of *Alcoa* is ironic, for the import of the quotation above is to *limit* U.S. jurisdiction.

If such tires are shipped to Tobago, is Asahi thereby subject to the personal jurisdiction of the courts of Trinidad and Tobago?[3] Is Asahi obligated to determine whether there are resale markets for Cheng Shin tires, *i.e.*, indirect sales to countries to which Cheng Shin itself does not ship? If Asahi learns or could learn of such third market sales, would that subject Asahi to the personal jurisdiction of the courts of those additional countries? How far back in the production chain are successive levels of component part manufacturers to be deemed to submit to the jurisdiction of the forum in which the final product comes to rest?[4]

On the facts of this case, as in these analogous scenarios, Asahi cannot be said to "purposefully direct" its activities toward California residents. *Burger King Corp.*, 105 S. Ct. at 2182-83; *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). Accordingly, it is unreasonable and therefore unconstitutional for California courts to assert personal jurisdiction over Asahi.

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[3] Lord Ellenborough doubted that "the Isle of Tobago [could] pass a law to bind the rights of the whole world." *Buchanan v. Rucker*, 9 East. 192, 194 (1808). Such is the logical import of the California Supreme Court's decision here, however.

[4] It is useful to test the reasonableness of the California Supreme Court's stream of commerce standard by considering how a foreign forum might apply it against an American enterprise in Asahi's shoes. Assume a U.S. semiconductor manufacturer in California sells microelectronic chips to a U.K. computer manufacturer, which incorporates the chips into its computers and then exports them to Tobago and other countries. If a court in Tobago exercises personal jurisdiction over the U.S. chip manufacturer solely on these facts, would a U.S. court recognize the foreign court's judgment? *See* Mann, *The Doctrine of Jurisdiction in International Law*, 111 Recueil des Cours 1, 75 (1964) (stating that the problem of recognizing foreign judgments is "very largely" identical with the problem of foreign courts' jurisdiction; "to be recognized by [a U.S.] forum, the foreign judgment must be pronounced by a court having jurisdiction").

C. Neither California's Interest in Adjudicating this Dispute nor the Assumption that California Jurisdiction is Likely to Prove More Favorable to the Claimant is a Sufficient Basis for a California Court to Assert Personal Jurisdiction over a Foreign Component Part Manufacturer such as Asahi

The California Supreme Court has linked the determination that it has personal jurisdiction over Asahi to the conclusion that California has a significant interest in adjudicating the dispute under California law.[5] Like other states in our federal system, California encourages liability suits by injured residents. California law also allows defendants (like Cheng Shin) to file contribution claims against alleged co-tortfeasors, thereby limiting the burden for any one defendant of paying generous recoveries. Undoubtedly an expansive rule of personal jurisdiction in U.S. courts advantages plaintiffs and cross-plaintiffs, particularly since many other countries strictly limit any opportunity for enormous damage awards in their courts. N.Y. Times, April 6, 1986, at 32, col. 1.[6]

But this advantage to plaintiffs or cross-plaintiffs alone cannot justify an extraordinary assertion of personal ju-

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[5] The court stated: "Apart from providing a forum to California plaintiffs to ensure that they are compensated, California has an interest in enforcing its safety standards and in deterring Asahi and other foreign manufacturers from shipping defective products into the state." App. C-16-17 n.10.

[6] This policy difference between the United States and other legal systems is well known. For example, in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 240 (1981), this Court recognized that U.S. laws concerning liability, capacity to sue and damages are more favorable than those of Scotland. Similarly, in the late 1970's the United Kingdom and the United States negotiated a convention on the mutual recognition of civil judgments. Those negotiations were broken off and have not been revived, in part because of British concerns about the amount of damages awarded in U.S. product liability cases. *See generally* North, *The Draft U.K./U.S. Judgments Convention: A British Viewpoint*, 1 Nw. J. Int'l L. & Bus. 219, 228-38 (1979).

risdiction. Section 421(1) of the draft Restatement of the Foreign Relations Law of the United States (Revised) ("Restatement (Revised)") makes clear that a court's exercise of adjudicatory (*i.e.*, personal) jurisdiction must be "reasonable."[7] Similarly, Section 403(1) of the Restatement (Revised) recognizes that U.S. law limits the jurisdiction of courts to:

> prescribe law with respect to activities, relations, status, or interests of persons or things having connections with another state or states when the exercise of such jurisdiction is unreasonable.

Restatement (Revised), *supra*, § 403(1) (Tent. Final Draft 1985). Section 403(2) of the Restatement identifies eight non-exclusive factors to be considered in determining reasonableness.[8] These factors weigh strongly

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[7] Section 421(1) provides:

> A state may, through its courts or administrative tribunals, exercise jurisdiction to adjudicate with respect to a person or thing, if the relationship of the person or thing to the state is such as to make the exercise of such jurisdiction reasonable.

Restatement of the Foreign Relations Law of the United States (Revised) § 421(1) (Tent. Final Draft 1985). The Restatement derives this general principle from both U.S. case law and international standards. *Id.* Reporters' Note 2. *See also* I. Brownlie, *Principles of Public International Law* 298 (3d ed. 1979); Mann, *supra* note 4, at 77 (both discussing the requirement of a "substantial connection" between the defendant and the forum).

[8] Section 403(2) provides:

Whether the exercise of jurisdiction is reasonable or unreasonable is judged by evaluating all the relevant factors, including, where appropriate,

> (a) the extent to which the activity (i) takes place within the regulating state, or (ii) has substantial, direct, and foreseeable effect upon or in the regulating state;
>
> (b) the connections, such as nationality, residence, or economic activity, between the regulating state and the persons principally responsible for the activity to be regulated, or

against the reasonableness of a California adjudication here. Asahi's sale of valves to Taiwan did not have a direct effect in California. The parties in dispute are Taiwanese and Japanese, and the dispute between them relates to their terms of trade in the flow of commerce between Japan and Taiwan. Because Asahi did not purposefully avail itself of the laws of California, it had no

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> between that state and those whom the law or regulation is designed to protect;
>
> (c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;
>
> (d) the existence of justified expectations that might be protected or hurt by the regulation in question;
>
> (e) the importance of the regulation in question to the international political, legal or economic system;
>
> (f) the extent to which such regulation is consistent with the traditions of the international system;
>
> (g) the extent to which another state may have an interest in regulating the activity; and
>
> (h) the likelihood of conflict with regulation by other states.

Restatement (Revised), *supra*, § 403(2).

These criteria explicitly relate only to prescriptive, not adjudicatory, jurisdiction. However, the fact that courts of different legal systems necessarily apply differing prescriptive standards to issues such as product liability means that even the question of whether a court should adjudicate needs testing against these reasonableness criteria. It has become apparent that this Court is not in a position to exercise supervision over state choice of law questions, short of wholly arbitrary actions. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981); *Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179, 181-82 (1964). Accordingly, it is appropriate to consider the criteria for both prescriptive and adjudicatory jurisdiction in weighing a due process challenge to a U.S. court's jurisdiction. *Cf. Allstate Ins. Co.*, 449 U.S. at 317 n.23 (noting that both choice of law and personal jurisdiction "'are often closely related and to a substantial degree depend upon similar considerations.'") (quoting *Shaffer v. Heitner*, 433 U.S. 186, 224-25 (1977) (Brennan, J., concurring in part and dissenting in part)).

justified expectation of being reached by California law when it sold its valves to Taiwan. California's desire to adjudicate the issue of Asahi's liability to Cheng Shin would apply policies that will significantly increase costs and uncertainties of international commerce. Both Japan and Taiwan can be presumed to have interests in regulating this dispute; if this Court establishes a precedent that a U.S. adjudication is appropriate in these circumstances, conflicts with the available remedies of other states are likely to result.[9]

When nations' commercial laws conflict, the chances increase that they will undermine each other's judicial authority. This is already emerging as a problem in the tort liability area. For example, in *Smith Kline & French Laboratories Ltd. v. Bloch*, [1983] 2 All E.R. 72 (C.A. 1982), the English Court of Appeal upheld an injunction preventing an English plaintiff from continuing an action in the United States against his former English employer and its American parent. The plaintiff's original complaint had multiple counts, with tort as a key element. Lord Denning referred to the "fabulous damages" U.S. juries are "prone to award" in tort cases as one justification for the injunction. *Id.* at 74.[10] Where there is protracted conflict, judicial judgments of one nation might not be enforced in another's courts. *E.g.*, U.K. Protection of Trading Interests Act 1980, c.11, § 4. More rarely, laws are passed to block or claw back damage awards viewed as excessive and illegitimate. *Id.* § 6. This is a regrettable development between friendly nations. Sometimes conflicts may be unavoidable, but not here.

[9] Similar considerations would apply even if the California court were to reconsider its present position and apply Japanese or Taiwanese law to determine Asahi's alleged obligation to indemnify Cheng Shin. The trial of such a case would necessarily involve legal standards and procedures foreign to Asahi, including plaintiff's right to a jury trial and broad pretrial discovery. That is not appropriate where, as here, the U.S. court's exercise of personal jurisdiction is unreasonable and the U.S. court is an inconvenient forum.

[10] The English plaintiff later filed an amended complaint dropping the English subsidiary and alleging only U.S. antitrust violations. The Court of Appeal held that because of these differences, continuation of that action in the U.S. court would not violate its earlier injunction. *Smith Kline & French Lab. Ltd. v. Bloch*, The Times (C.A. Nov. 13, 1984).

Where the claim of the U.S. forum to exercise jurisdiction is tenuous and fortuitous, even if the plaintiff would benefit and a forum interest would be served, this Court has

> held it a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state. . . . The purpose of a conflicts-of-laws doctrine is to assure that a case will be treated in the same way under the appropriate law regardless of the fortuitous circumstances which often determine the forum.

Lauritzen v. Larsen, 345 U.S. 571, 590-91 (1953) (citations omitted). That purpose requires reversal of the decision below.

II. THIS COURT HAS REPEATEDLY RECOGNIZED THAT THE INTERESTS OF INTERNATIONAL COMMERCE REQUIRE CONSIDERATION OF FACTORS NOT NECESSARILY PRESENT IN INTRA-U.S. CONTROVERSIES

This Court has applied the reasonableness limitation on jurisdiction by holding in a series of cases that jurisdictional rules designed primarily for the domestic context should not be mechanically applied in cases involving international commerce. This case fits within that pattern.

In *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), this Court upheld a choice of law clause calling for adjudication in London, reversing the Court of Appeals,

which had resisted the "ouster" of U.S. jurisdiction. In *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974), this Court upheld a clause calling for arbitration in Paris, reversing the lower court's application of a domestic rule precluding arbitration of securities disputes.

In *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), this Court reversed the lower court's decision that the foreign plaintiffs could choose a U.S. forum to litigate a product liability dispute against a U.S. manufacturer. This Court held that Scotland was a more appropriate forum, even though it was clear that any damages plaintiffs might recover in Scotland would be far less than in this country.[11]

In *Helicopteros*, 466 U.S. 408, this Court reversed the Supreme Court of Texas and held personal jurisdiction to be lacking in a case where the foreign defendant had far greater ties to the United States and to the forum state than Asahi does here. And most recently, in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, —— U.S. ——, 105 S. Ct. 3346 (1985), this Court upheld a clause calling for arbitration in Tokyo, reversing the lower court's decision that had applied a domestic policy precluding arbitration of antitrust claims.

In each of these cases, at least one of the parties was a U.S. resident. Yet this Court determined that a foreign forum, not a U.S. court, was the appropriate place to resolve the controversy. In the present case, there is

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[11] While the doctrine of forum non conveniens applied in *Piper* is not grounded in the due process clause of the Constitution, there are common considerations relevant to both. That the law available to the claimant in an alternative forum is less favorable to its chances of recovery is only one factor under both forum non conveniens and due process balancing tests. Moreover, that factor is not controlling where giving it excessive weight would be unreasonable. *Piper*, 454 U.S. at 250; *World-Wide Volkswagen*, 444 U.S. at 294.

no U.S. party. Two foreign parties (or their insurers) are linked in some way with an accident in the United States. One of the parties (Taiwanese) wants to litigate its indemnity claim against the other party (Japanese) in California. On these facts, California clearly is not a reasonable forum to adjudicate this dispute.

CONCLUSION

United States and foreign governments, producers and consumers share an interest in developing a fair and reasonable method for allocating the costs of injuries resulting from defective products in the flow of international trade. That interest will not be served if every nation reaches as far as it can to impose its distinctive standards in unpredictable ways. This case provides this Court with an opportunity to influence the development of customary international law in this area by restraining exorbitant claims of jurisdiction over foreign persons.

As shown above, this Court has demonstrated in a variety of settings that the factors determining the reasonableness and fairness of U.S. personal jurisdiction are to be weighted differently for essentially foreign controversies than for domestic disputes. Many state courts, however, are not following this lead. Instead, they increasingly seek to extend their jurisdiction over persons outside the United States, thereby injecting a burdensome uncertainty into international trade. In *Helicopteros* and in a number of recent domestic cases, this Court has limited the reach of state court judicial jurisdiction to ensure that such jurisdiction accords with due process requirements of fairness and reasonableness. By reversing California's jurisdictional claim in this case, this Court would both reaffirm its recent holdings on state court jurisdiction and promote reasonable regulation of international trade.

Accordingly, the judgment of the California Supreme Court should be reversed.

Respectfully submitted,

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